ceeded in placing representatives in the Eastern markets thereby achieving more intelligent distribution of the crop and avoidance of glut. Despite this early beginning at cooperative marketing, the Union succumbed to the persistent opposition of commission men and buyers who were able to make larger profits dealing with growers individually.

After the failure of this and other early attempts at organizing grower marketing, there occurred a series of meetings in 1893 at which the cooperative technique of pooling fruit at the packing house level was explained. Out of these discussions came a plan for creation of informal Boards of Exchange in each producing district. These Boards were to be composed of representatives of each local association within the district. Uniform grades and brands were to be developed by each Board of Exchange for its district. The managers of each association in the district were to meet daily at the office of the district to transact the business of selling their growers' fruit.

The district Boards of Exchange in turn selected representatives on the Executive Board of the Southern California Fruit Exchanges. The Executive Board then had the duty of regulating and prorating sales from the several districts.

The concept of cooperative marketing through grower owned associations was enthusiastically adopted in 1893 and 1894. The informal district Boards of Exchange were incorporated as cooperative corporations by their member associations and were thereafter known as "District Exchanges".

In 1895 the Executive Board was incorporated as Southern California Fruit Exchange. In recognition of

the development of cooperative marketing in Central California, as evidenced by formation in 1901 of the Tulare County Citrus Fruit Exchange, Southern California Fruit Exchange was dissolved in 1905 and its functions were succeeded to by the newly-formed California Fruit Growers Exchange, which changed its name in 1952 to Sunkist Growers, Inc.

At the outset, Sunkist was entirely a sales department. That remains its primary function. But as an adjunct to its selling function, Sunkist developed many departmental activities of common value to its growers.

During the first two decades of the century, most of the departmental organization of Sunkist had its beginning. An early committee on claims preceded the development of a claims department of Sunkist in 1904. By 1910 this had developed into a Traffic Department, handling traffic claims and related problems for all Associations and District Exchanges affiliated with the Sunkist System.

Work in the field was of great importance. This included encouraging the institution of radical changes in the methods of handling fruit to implement the results of the decay investigation conducted by the U.S. Department of Agriculture in 1904. Research of all types was soon undertaken by Sunkist.

A field organization department was set up to help improve methods of organizing and operating District Exchanges and Associations.

Commencing in 1907, Sunkist developed an advertising program to promote sale of its growers' fruit. The "SUNKIST" trademark was adopted in that same

year and has been used continuously since then by Sunkist on the highest quality citrus fruit. In the wake of advertising, came the patent and trademark division.

Among other vital departments to develop in Sunkist was the Research Department, covering all forms of research from methods of handling and preserving fresh fruit to development of citrus products.

By 1915 there existed a substantial surplus production of lemons over and above the quantity which could be sold in the form of fresh fruit. Rather than destroy this surplus fruit, some of the packing houses shipping lemons through the Sunkist System joined together to organize Exchange By-products Company—which later changed its name to Exchange Lemon Products Company. This corporation was a cooperative endeavor by those associations which formed it. In later years all packing houses shipping lemons through the Sunkist System joined Exchange Lemon.

In 1918 some of the packing houses shipping oranges through the Sunkist System formed a similar corporation (named Exchange Orange Products Company) for purposes of handling surplus oranges. After an early disastrous experience in the marmalade business during the runaway sugar prices in World War I, that corporation was dissolved. A new corporation of a similar purpose and ownership was formed in 1920 under the name The Exchange Orange Products Company. In 1931, all of its stock was acquired in the name of Sunkist to assure the availability of its processing facilities to all Associations shipping oranges through the Sunkist System, as well as those Associations which had theretofore owned stock.

Thus, by 1920 the corporate and functional pattern of the Sunkist System was established as it remained until October 31, 1958, when Exchange Lemon Products Company and The Exchange Orange Products Company were merged into Sunkist and thereby became the Lemon Products Division and the Orange Products Division, respectively.

With regard to the physical handling of fruit, the grower cares for the trees and brings the citrus fruit to the point where it is ready to be picked. The packing house association then normally sends its specialized crews into the groves to pick the fruit. When the fruit is brought to the packing house, it is washed and graded. The fruit graded as products fruit is then diverted to a separate, so-called, juice fruit bin. The remaining marketable fruit is then either packed or put up as loose fruit awaiting sale on the fresh fruit market. When a sale in fresh fruit channels has been arranged, the fruit is shipped to the customer on a delivery price basis, or placed aboard the train or truck in the case of F.O.B. sales, or shipped to the selected auction or public sale markets. A limited amount of fresh fruit is also sold in the producing area on a negotiated sale basis in which case it is picked up at the packing house by the Buyer's trucker.

When the decision was made for any reason to divert fruit to products utilization (as distinguished from sale in fresh fruit channels) the Exchange Lemon or Exchange Orange was notified* and their trucks picked up the fruit for transportation to the appropriate processing plant. In those instances where the Exchange

*With the exception of Arizona grapefruit and Yuma oranges, which are handled locally.

Orange or Exchange Lemon sold a portion of the fruit diverted to it to processors not affiliated with the Sunkist System, that fruit was normally picked up by the processor direct at the packing house on authorization from the Products Company involved.

Neither the District Exchanges nor Sunkist had facilities for physically handling the fruit.** The actual handling of the fruit throughout the marketing operation is by the packing house Association, in the facilities of the appropriate Products Company, or in the hands of public carriers and the operators of public auctions.

Each District Exchange is organized and operated to meet the peculiar local needs of its member packing house Associations. In the job of marketing the fruit of its member Associations, the District Exchange generally is in communication, through representatives furnished by Sunkist, with customers in the major markets throughout the United States. District Exchange personnel possess specialized sales knowledge applicable to the fruit produced in the area served by the particular District Exchange. They negotiate and confirm sales for their member packing houses and arrange for the physical shipment of fruit to market. The District Exchange is not directly involved in the processing or marketing of fruit diverted to products utilization.

**With the possible exception of the Tempe, Arizona, plant which may have been operated by the Arizona Citrus Exchange since November 1, 1957.

Apart from its specialized marketing function, the District Exchange is one of the conduits of communication and representation between the local packing house Association and Sunkist. From an accounting standpoint, the District Exchange acts as a conduit through which payment of proceeds from the sale of fresh fruit and products oranges and grapefruit is made to its affiliated local Associations and assessments on fresh fruit for operating funds and revolving fund capital are collected.

From an accounting standpoint, all members of the Sunkist System beyond the grower (with the exception of the Agency Associations as hereafter noted) operate on a strict cost basis, remitting to the grower, through the channels of the System, all marketing proceeds in excess of reimbursement of actual costs, and deductions or assessments for maintenance of authorized reserves or grower capital. The Agency Associations return to their growers all of the proceeds of marketing over their actual cost plus the fixed fee per box.

The District Exchanges, Sunkist, Exchange Orange and Exchange Lemon market or process and market no citrus fruit other than that coming into the Sunkist System through the Associations.

All products produced by Exchange Orange or Exchange Lemon were marketed by Sunkist in its name.

[Statement of Issues of Law Omitted.]

ON THE BASIS OF THE FOREGOING stipulation of facts and issues of law, the parties respectfully ask leave of the Court to file concurrent briefs of the controlling law and facts on or before May 24, 1961, and concurrent reply briefs on or before June 26, 1961; whereupon the parties pray that the Court set the matter for argument and determine the issues herein set forth prior to trial.

Dated: April 10, 1961.

By s/ William H. Henderson
William H. Henderson
Attorney for Plaintiff

February 1, 1961.

By Donald D. Stark
By s/ Donald D. Stark
Attorney for Defendant

It is so Ordered.

Dated: February ...., 1961.

.....
Judge

[Exhibits omitted.]